

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:) Case No. 15-41404-705
GREEN JACOBSON, P.C.,) Honorable Charles E. Rendlen, III
Debtor.) Chapter 7
)
)

**TRUSTEE’S RESPONSE TO (AMENDED) CLAIM NO. 8-2
FILED BY “DAVID P. OETTING, CLASS REPRESENTATIVE”**

Comes now David A. Sosne, Trustee for Debtor, by his undersigned counsel, and for his Response to Claim Number 8-2 filed on October 13, 2016 by “David P. Oetting, Class Representative” states as follows;

1. David Oetting, as Class Representative of the NationsBank Class Action suit, sets forth an “amended” Claim Number 8-2, which increases the claim amount by \$220,609.84, from \$61,612.03 to \$282,221.87.

2. Oetting asserts that \$220,609.84 was unaccounted for in the NationsBank Class action case, and that amount may have arisen from some “adjustments” made by Debtor in the Class Action records to a line item labeled “Administrator Fees and Costs and Adjustments. [Claim 8-2, Part 2].

3. The Claim bar date in Debtor’s bankruptcy case was July 6, 2015.

4. To the extent that Oetting’s amended Claim No 8-2 involves a different bank account, different transactions and/or different conduct than at issue in Oetting’s original Claim No. 8-1, then his amended Claim No. 8-2 does not arise from the same facts or transactions set forth in Claim No. 8-1 and is barred by the Claims bar date in this action, i.e. amended Claim No 8-2 does not relate back to the timely filed Claim No. 8-1.

5. In the Class Action case, a former attorney and officer of Debtor, Jonathan Andres, filed a Response with Judge Jackson indicating that Debtor had mistakenly failed to be receive \$39,127.15 in attorney's fees previously awarded to Debtor before its Petition Date. According to Andres, those funds were erroneously distributed to the Class. [*Id.*, Doc. #900]. If that is the Case, the Trustee believes the \$39,127.15 amount is property of Debtor's estate (as well as any other unpaid attorney's fees due Debtor before the Petition Date).

6. During 2015, Oetting raised the issue of "unaccounted" funds in the Class Action suit and sought an accounting of the NationsBank Class Action settlement funds. [Case No. 4:99-MF-1264-CEJ, Doc. #848 and Doc. #860]. At Oetting's request, on September 22, 2015, Judge Jackson appointed a St. Louis accounting firm (Anders Minkler Huber & Helm LLP) to perform an accounting of the NationsBank Class settlement funds. [*Id.*, Doc. #881). No final accounting has been filed with Judge Jackson at this time.

7. Oetting has not asserted a true claim against Debtor's estate, but rather is asserting that certain funds not held by Trustee belong to the NationsBank Class. Presumably, the accounting ordered by Judge Jackson will address that issue. Thus, Oetting's Claim No. 8-1 and amended Claim No. 8-2 are more in the nature of an 11 U.S.C. § 541 issue regarding what is property of the estate rather than a claim or debt owed by Debtor to the NationsBank Class. Oetting's request for an accounting of the Class Action funds was granted by Judge Jackson, and that accounting will likely decide the Class's entitlement, if any, for the unaccounted for or alleged missing funds.

8. Trustee hereby incorporates its Response to Oetting's Claim No. 1 herein (filed on October 12, 2016) as if fully set forth herein in further response to Claim No. 8-2.

9. For the reasons set forth herein, Oetting's Claim No. 8-1 and amended Claim No. 8-2 should be denied.

Respectfully Submitted,

SUMMERS COMPTON WELLS LLC

Date: October 17, 2016

/s/ Stephen C. Hiotis

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on October 12, 2016 via electronic filing in the CM/ECF system of the United States Bankruptcy Court for the Eastern District of Missouri to the parties requesting service by electronic filing. I hereby also certify that a copy of the foregoing was served via United States Mail, first class postage prepaid, on October 17, 2016, to those individuals and entities not requesting service by electronic filing. The individuals and entities being served electronically or by mail are:

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Date: October 17, 2016

/s/ Christina Hauck